3. Nusbaum (Respondent's Brief pages 35-37).

In order to read the claims in suit on the Nusbaum machine, respondent is forced to ignore the meaning of the term "straight knitting machine" as used in the specification to refer to the full-fashioned machine. This point has been discussed above page 2. The clear distinction between the patented attachment for providing designs for full-fashioned stockings and the make-shift Nusbaum device which turned a full-fashioned machine into one which could do no fashioning has been pointed out at pages 28 to 30 of our main brief.

At page 37 of its brief, respondent refers to the decision of the Court of Appeals "to the effect that the patent in suit disclosed no invention over either the Gotham or Nusbaum devices". The Court of Appeals did not hold that either Gotham or Nusbaum was sufficient to deprive the claims of the patent in suit of invention. On the contrary, the Court of Appeals found it necessary to couple the two prior devices, and in this, that Court, we submit, fell into error for the reasons fully pointed out at pages 30 to 32 of our main brief. Respondent, in its discussion of the Gotham and Nusbaum devices, makes no effort to justify the proposal of the Court of Appeals to combine the two uncombinable devices. It dodges this issue by attempting to read the decision of the Court of Appeals as holding either Gotham or Nusbaum alone sufficient to defeat the claims.

4. The Patented Device is an "Attachment".

At pages 14 and 15 of its brief, respondent asserts that by referring to the patented device as an *attachment* for the full-fashioned machine we seek to differentiate that device from prior structures *built into the machine as part*

of its initial fabrication. We make no such distinction and there appears to be little excuse for respondent's contention in that regard, as we have clearly pointed out that a great merit of the patented "attachment" is its adaptability either to be applied to an old machine or to be built into a new one. The reason for this is that, as the title of the patent and its specification, and the device itself, all clearly show, the device is one adapted to be attached to the regular full-fashioned knitting machine *without alteration of any of the regular parts of the machine or interference in any manner with the proper functioning of the regular machine,* whether said attachment is fuctioning or not. It is thus that the attachment is applicable to the machine either at the time the machine is built or thereafter, and it is thus that the attachment can cooperate with the regular parts of the full-fashioned machine in the manner clearly explained in the specification—see page 12 of our main brief.

This distinction was completely missed by the Court of Appeals, when it referred to the Nusbaum device as an "attachment"—see pages 28, 29 of our main brief. Nusbaum provided no "attachment" for his full-fashioned machine, but used his regular fashioning screws for design purposes and thereby eliminated fashioning.

The fact that the term "attachment" is not used in the claims is immaterial. It is the combination of elements set forth in the claims which creates the "attachment".

5. Alleged Want of Utility (Respondent's Brief, pages 46-52).

Respondent's argument on this point may be confusing, being based upon an earlier Schletter application filed in 1922. The earlier application had become abandoned before the application which resulted in the patent in suit was filed, and as the latter was an entirely new application with a different specification, reference to the earlier

abandoned application is irrelevant. The new application involved a new and independent proceeding.

The answer to respondent's point will be found at pages 42 to 44 of our main brief. As there pointed out, and as the District Court found, the disclosures of the patent in suit are not at all limited to the single specific type of work criticised by respondent, and the claim of lack of utility therefore has no basis. In fact, splicing or reinforcing work, as distinguished from split-seam work in general, is set forth in the patent in suit as the primary object.

Furthermore, if the disclosures of the patent were limited to split-seam work as distinguished from splicing or reinforcing work, and further, to *open* split-seam as distinguished from *closed* split-seam, respondent to make its point would have to go still further and limit the disclosure to a *two-needle* open split (styled by respondent "herring-bone") as distinguished from a *four-needle* open split. This, however, respondent does not even attempt to do, as the rocking undercut stops of the patent in suit are just as available for a four-needle open split as for a two-needle open split, the patent specification containing no indication as to any such detail. Any claim that the four-needle open split is non-commercial would be directly against the evidence. (Hemmerich, R. I, pp. 64, 65, 68; Goetsch, R. I, pp. 128, 130, 131.)

6. Infringement (Respondent's Brief, pages 53-57).

In addition to what has been said at pages 46 to 48 of our main brief, it is only necessary to point out:

(a) The correspondence between the applicant and the Examiner, referred to on page 46 of respondent's brief, had to do with the use of a pattern chain for the attachment separate from the regular pattern chain always present on the full-fashioned machine for controlling the movement of the main cam shaft, and had nothing whatever to do with the use of two separate pattern chains for the timing and selective means employed in the attachment.

(b) As to the argument on pages 56 and 57 to the effect that Schletter in a later patent obtained a claim for a single pattern chain as distinguished from the two pattern chains shown in the patent in suit, this would be quite immaterial, if true, because an improvement upon one element of a combination does not at all mean that such improvement can be used without infringing the original combination. However, an examination of the later Schletter Patent (R. II, p. 441) will show that none of the claims is directed to a single pattern chain, per se, or to a combination in which the only difference from that of the patent in suit is the substitution of a single pattern chain for two pattern chains. Claim 10, referred to by respondent, has nothing to do with the subject; and Claim 15, which does include a single pattern chain as one element also includes other features which distinguish the later device from that of the patent in suit.

Respectfully submitted,

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